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July 1, 2004

Helgi C. Walker
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The Honorable Michael K. Powell
Chairman
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Dear Chairman Powell:

As counsel for Verizon Wireless, I am filing this supplemental memorandum by Mr. Charles J. Cooper, former Assistant Attorney General of the Office of Legal Counsel.

Sincerely yours,

/s/

Helgi C. Walker

Cooper & Kirk
Lawyers
A Professional Limited Liability Company

Memorandum

TO: Steven E. Zipperstein
Vice President -- Legal & External Affairs,
General Counsel and Secretary
Verizon Wireless

DATE: July 1, 2004

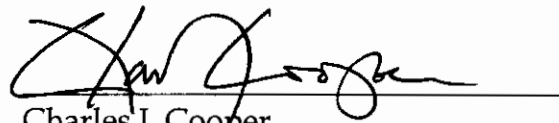
RE: The Federal Communications Commission's Proposed Sale of
Spectrum to Nextel Communications - Relocation of Broadcast
Auxiliary Service Licensees Out of 1.9 GHz Band

In a Memorandum dated June 28, 2004, I provided you with this firm's views concerning the legality of a proposed bilateral transaction between the Federal Communications Commission ("FCC" or "Commission") and Nextel Communications ("Nextel") for the licensing of federally controlled radio spectrum. Specifically, we concluded that the proposed transaction would violate Federal laws, including criminal provisions, governing the stewardship and disposition of public funds and resources.

Since the submission of the June 28 Memorandum, an additional feature of the proposed transaction has come to our attention. In order to create room for itself in the 1.9 GHz band, Nextel proposes to bear the cost (which it estimates as \$512 million) of relocating the Broadcast Auxiliary Service ("BAS") licensees who currently occupy 35 MHz of spectrum in the 1.9 GHz band (even though Nextel seeks to occupy only 5 MHz of spectrum in the 1.9 GHz band). Nextel's proposal to bear this cost, however, is conditioned upon the Commission granting it full credit for these costs as part of the consideration provided by Nextel in exchange for the 1.9 GHz band spectrum it seeks. *See* Joint Proposed BAS Relocation Plan at 4 (May 3, 2004).

We believe that Nextel's proposal with respect to the BAS licensees is materially indistinguishable, for purposes of the laws at issue, from its proposal

to bear the cost of relocating the public safety licensees from the 800 MHz band. In both cases, the credit granted by the FCC to Nextel against the purchase price of the spectrum license would deprive the Treasury of revenue that it would otherwise receive from the sale of the 1.9 GHz band spectrum, and in both cases, the Commission would be effectively expending that revenue to accomplish its *own* policy objectives (relocation of the public safety licensees and the BAS licensees, respectively) even though Congress has not appropriated the necessary funds for those purposes. The Attorney General and the Comptroller General decisions cited and discussed in our June 28 Memorandum demonstrate that this arrangement not only would contravene the specific statutory requirement that spectrum be sold at public auction, *see* 47 U.S.C. § 309(j)(3)(c), but would also violate both the Anti-Deficiency Act, 31 U.S.C. § 1341, and the Miscellaneous Receipts Act, 31 U.S.C. § 3302.


Charles J. Cooper